SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No.

EMERSON F. MINNIE, PETITIONER,

vs.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

INDEX.

	Original	Print
Proceedings in Supreme Court of Michigan	1	1
Docket entries	1	1
Proceedings before Department of Labor and Industry	2	1
Notice and application for adjustment of claim	2	1
Plea and answer of defendants	3	2
Order awarding compensation	5	3
Minute entry of submission	7	4
Opinion, Wiest, J.	8	4
Judgment	12	7
Praecipe for transcript of record	13	7
Clerk's certificate (omitted in printing)	15	

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[fol. 1]

IN SUPREME COURT OF MICHIGAN

37945

E. F. Minnie, Plaintiff,

vs.

Port Huron Terminal Company and Fidelity and Casualty Company of New York, Defendants and Appellants

Appeal from Department of Labor and Industry

Plaintiff's Attorneys: Stewart and Black.

Defendants' Attorney: Leo J. Carrigan.

Docket Entries

1934.

May 10. Application for leave to appeal filed.
" . Application for leave to appeal granted.
June 20. Proof of claim of appeal filed.
Aug. 30. Note of argument filed.
Oct. 4. Submitted on briefs.
Dec. 10. Reversed, costs.
" 17. Praecipe for record filed.
" 28. Remittitur to Department.

[fol. 2] Before Department of Labor and Industry, Lansing, Michigan

State of Michigan,
County of St. Clair, ss:

E. F. Minnie, 1627 Jay Street, Port Huron, Michigan, Plaintiff,

v.

Port Huron Terminal Company, Port Huron, Michigan, Defendant

Notice and Application for Adjustment of Claim

Emerson F. Minnie, the above named plaintiff, hereby gives notice to said Department of Labor and Industry that

the above named parties have failed to reach an agreement in regard to compensation under Act No. 10 of the Public Acts, First Extra Session of 1912, and hereby makes application to said Department of Labor and Industry for the adjustment of such compensation between said parties, and the adjudication and determination of the same.

Said plaintiff further shows that the accident upon which claim for compensation is based in this matter occurred on the 11th day of July, 1932, at the town of Port Huron, county of St. Clair and State of Michigan, and resulted in 4 fractures—back injury.

The post office address of the above named plaintiff is 1627 Jay Street, Port Huron, and the post office address [fol. 3] of the defendant is as follows: Port Huron.

The above named plaintiff prays for the following relief in the premises, viz.: Compensation in accordance with law.

Your plaintiff therefore prays that your honorable commission set this application for hearing before a commissioner or deputy commissioner so that your plaintiff may present proof in support of his claim and that he be granted such relief as he is entitled to under the Workmen's Compensation Law of Michigan.

Dated at Port Huron, this 15th day of September, 1933.

(Signed) Emerson F. Minnie, 1627 Jay Street, Port Huron, Michigan, Plaintiff.

(Printed instructions omitted)

Before Department of Labor and Industry, Lansing, Michigan

[Title omitted]

PLEA AND ANSWER OF DEFENDANTS

Now come the above named defendants, by Leo J. Carrigan, their attorney, and demand a hearing and trial of the matters set forth in plaintiff's notice and application for adjustment of claim.

[fol. 4] If the plaintiff on the trial of said cause introduces any evidence tending to support his alleged claim, these defendants will especially insist in defense:

1. That the injury sustained by the plaintiff, if any, was sustained while the plaintiff was engaged in a maritime employment on the Great Lakes, and therefore the Department of Labor and Industry has no jurisdiction herein.

2. That the injury sustained by the plaintiff, if any, was sustained while the plaintiff was engaged in foreign commerce, and therefore the Department of Labor and Industry has no jurisdiction herein.

Leo J. Carrigan.

Business Address:
2510 Eaton Tower, Detroit, Michigan.

[fol. 5] Before Department of Labor and Industry

E. F. Minnie, Plaintiff,

v.

Port Huron Terminal Company, Fidelity and Casualty Company, Defendants

Order Awarding Compensation

At a session of the Department of Labor and Industry held at its offices in the city of Lansing, Michigan, this 24th day of April, A. D. 1934.

Present: Hon. Claude S. Carney, chairman; Hon. Wm. A. Seegmiller, commissioner; Hon. Eugene P. Berry, commissioner.

This cause having come on to be heard on appeal of the defendants from the award made by the deputy commissioner on December 4, 1933, awarding compensation at the rate of $9.60 per week from July 11, 1933, until the further order of the commission, together with $75.00 for medical care and expenses, and after due consideration of the evidence and the arguments of counsel (the commission having made a finding of facts and law) it appears to this commission that the award made as aforesaid must be affirmed with the modification that compensation shall be paid at the rate of $12.32 per week instead of $9.60 per week;

Therefore it is ordered, adjudged and decreed that the [fol. 6] award of the deputy commissioner, with the modification as aforesaid, be and the same is hereby affirmed.

Department of Labor and Industry. Claude S. Carney, Chairman; Wm. A. Seegmiller, Commissioner; Eugene P. Berry, Commissioner.

EPB:LD.

(Mailed Apr. 24, 1934. Dept. of Labor and Industry.)

[fol. 7] IN SUPREME COURT OF MICHIGAN

[Title omitted]

MINUTE ENTRY OF SUBMISSION—Dec. 4, 1934

This cause coming on to be heard is duly submitted on briefs.

[fol. 8] IN SUPREME COURT OF MICHIGAN

E. F. MINNIE, Plaintiff-Appellee,

vs.

PORT HURON TERMINAL COMPANY ET AL., Defendant-Appellants

Before the entire bench

OPINION—Filed Dec. 10, 1934

WIEST, J.:

Plaintiff was a longshoreman, employed by defendant terminal company in unloading a vessel at Port Huron. While upon the deck of the vessel and about his work he was struck by a swinging hoist, lifting cargo from a hatch, precipitated to the wharf and injured. This is an appeal in the nature of certiorari from an award to plaintiff under the Workmen's Compensation Law.

Defendant contends that the accident was upon navigable water and, therefore, not within the provisions of the compensation law of this state.

The commission found that the injury must have been occasioned by plaintiff's fall upon the wharf, and held that the injury consummated, in whole or in part, upon the land

brought the case within the compensation act, even though [fol. 9] the injuries would not have been received except for the direct force applied upon plaintiff's person while on the deck of the vessel.

A longshoreman, while employed in unloading a vessel lying in navigable water, is engaged in work of a maritime nature under a maritime contract. Peters v. Veasay, 251 U. S. 121. The work of the longshoreman was upon the vessel and the force was applied to his person there with serious consequences when he was knocked from the deck of the vessel to the wharf. The judicial power of the United States extends to all cases of admiralty and maritime jurisdiction. Southern Pacific Co. v. Jensen, 244 U. S. 205. The accident was on the deck of the vessel and the injury by fall upon the wharf. The place of the accident identifies the applicable law.

We held in Cooke v. Holland Furnace Co., 200 Mich. 192, (quoting syllabus):

"While the words 'accident' and 'injury' are not synonymous, the accident produced the injury, and in point of time they are concurrent."

There can be no award of compensation without an accident and consequent injury. The unlooked for mishap or untoward event was upon the deck of the vessel and constituted an accident, and cannot be separated from the fall to the wharf and injuries there sustained for, under our compensation act, the award must be for "accidental injuries." Savage v. City of Pontiac, 214 Mich. 626. We cannot separate the cause from the consequences; the origin from the immediate end; the accident from the injuries. To do so would result in a finding of an accident while engaged in work of a maritime nature and, therefore, not within the [fol. 10] state act, and then another finding that the injuries, occasioned thereby, are to be distinguished from the proximate cause thereof and, therefore, not of Federal cognizance.

The Longshoremen's — Harbor Workers' Compensation Act (Act of March 4, 1927, c. 509, 44 Stat. 1424; U. S. C. Tit. 33, secs. 901-950), must be considered. Under that act:

" 'Injury,' within the statute, 'means accidental injury,' or death arising out of and in the course of employment,' and the term 'employer' means one any of whose employees

are employed in maritime employment, in whole or in part,' upon such navigable waters."

Crowell v. Benson, 285 U. S. 22, 38.

The Senate Judiciary Committee, in reporting the measure, stated in part:

"If longshoremen could avail themselves of the benefits of State compensation laws, there would be no occasion for this legislation; but, unfortunately, they are excluded from these laws by reason of the character of their employment; and they are not only excluded but the Supreme Court has more than once held that Federal legislation can not, constitutionally, be enacted that will apply State laws to this occupation. (Southern Pacific Co. v. Jensen, 244 U. S. 205; Knickerbocker Ice Co. v. Stewart, 253 U. S. 149; Washington v. Dawson & Co., 264 U. S. 219."

Senate Report No. 973, 69th Cong., 1st sess., p. 16, cited in footnote to the above case.

In Smith & Son v. Taylor, 276 U. S. 179, a longshoreman was standing on a stage which rested solely upon the wharf and projected a few feet over the water to one side of the vessel and, while working there, a sling carrying a load, struck the workman and knocked him off the stage into the water, where sometime later he was found dead. The court stated:

[fol. 11] "Deceased was engaged in maritime work under a maritime contract. If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana compensation law violated sec. 2 of Art. 3 (U. S. Constitution). But, if the cause of action arose upon the land, the state law is applicable. * * * The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death."

In the case at bar "the sole, immediate and proximate cause" was upon the deck of the vessel while plaintiff was engaged in work of a maritime nature; the blow there received took effect while plaintiff was upon the vessel and gave rise to a cause of action under Federal law.

We hold that, a longshoreman, on the deck of a vessel of foreign registry, lying in navigable water, while at work unloading from a hatch and struck by a swinging crane or hoist, carrying a load from the hatch, and knocked to the wharf and injured, is engaged in work of a maritime nature, under a maritime contract, and cannot have an award of compensation under the Workmen's Compensation Act of the state. Federal law controls.

The award is vacated, with costs, to defendant.

Signed: Howard Wiest, George E. Bushnell, Edward M. Sharpe, Henry M. Butzel, Louis H. Fead, William W. Potter, Nelson Sharpe, Walter H. North.

[File endorsement omitted.]

[fol. 12] IN SUPREME COURT OF MICHIGAN

37945

E. F. MINNIE, Plaintiff

vs.

PORT HURON TERMINAL COMPANY, AND FIDELITY AND CASUALTY COMPANY OF NEW YORK, Defendants and Appellants

JUDGMENT—Dec. 10, 1934

This matter having been brought to this Court by appeal from an order of the Department of Labor and Industry, and having been argued by counsel, and due consideration thereof having been had by the Court, and it appearing to the Court that in the making of said order in said Department there is Manifest Error, Therefore it is ordered and adjudged that the order of said Department of Labor and Industry, appealed from, be and the same is hereby reversed and vacated, with costs to defendants.

[fol. 13] IN SUPREME COURT OF MICHIGAN

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To Jay Mertz, Clerk of the Supreme Court of Michigan:

Please prepare, under your hand and the seal of said Court, a certified transcript of the record in the above en-

titled cause for filing in the Supreme Court of the United States, containing the following items thereof:

1. Notice and application for adjustment of claim. Pages 8 and 9 of printed record.
2. Plea and answer of defendants. Pages 9 and 10 of same record.
3. Order awarding compensation. Pages 65 and 66 of same record.
4. Opinion of Michigan Supreme Court.
5. Judgment of Michigan Supreme Court.

Yours, etc., Stewart & Black, Attorneys for Plaintiff and Appellee. Business address, 408-9 First National Bank Building, Port Huron, Michigan.

Dated: December 15, 1934.

[fol. 14] STATE OF MICHIGAN,
County of Ingham, ss:

Eugene F. Black, being first duly sworn, deposes and says that on the 16th day of December, 1934, at Port Huron, Michigan, he deposited in the United States Post Office in said city an envelope plainly addressed to Leo J. Carrigan, Attorney and Counselor, 2510 Eaton Tower, Detroit, Michigan, which envelope contained a true and correct copy of the within and attached Praecipe For Record and upon which envelope were affixed United States postage stamps sufficient to fully prepay postage thereon.

Deponent further says that the above specified address is at this date and has been for some time past the business address of said Leo J. Carrigan, who is the attorney of record for the within named appellants.

Eugene F. Black.

Subscribed and sworn to before me this 17th day of December, 1934.

Hugh Carpenter, Deputy Clerk, Supreme Court of Michigan.

[fol. 15] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 11, 1935

The petition herein for a writ of certiorari to the Supreme Court of the State of Michigan is granted, and the case is assigned for argument immediately following the hearing of No. 696.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.